

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

)

8:09CV419

)

Plaintiff,

)

)

v.

)

**MEMORANDUM
AND ORDER**

)

ROCHESTER ARMORED,

)

)

Defendant.

)

This matter is before the court on the plaintiff's Notice of Interlocutory Appeal, construed as a Motion for Interlocutory Appeal, and the plaintiff's Motion for Leave to Appeal In Forma Pauperis ("IFP"). (Filing Nos. [9](#) and [10](#).) In his motion for interlocutory appeal, the plaintiff seeks to appeal the court's February 16, 2010, Memorandum and Order requiring him to show by a preponderance of the evidence that the damages amount that he alleged in his complaint is legitimate. (Filing No. [8](#) at CM/ECF p. 2.)

As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such "controlling question of law" is implicated. The court's February 16, 2009, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion. It merely asks the plaintiff "to show by a preponderance of the evidence that the damages amount alleged is legitimate." (Filing No. [8](#) at CM/ECF p. 2.) Therefore, there is no reason why a present appeal should proceed prior to the entry of a final judgment. For these reasons, the plaintiff's Motion for Interlocutory Appeal and Motion for Leave to Appeal IFP are denied.

IT IS THEREFORE ORDERED that the plaintiff's Motion for Interlocutory Appeal and Motion for Leave to Appeal IFP (filing no. [10](#)) are denied.

Dated March 1, 2010.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge